

Senate Study Bill 1206

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL
BY CO=CHAIRPERSONS
BEHN and WARNSTADT)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to identity theft including criminal violations
2 and damages recoverable in a civil action, providing for
3 forfeiture of property and for certain rights of financial
4 institutions, and providing for civil remedies.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2371SC 81
7 kk/sh/8

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1 1 Section 1. NEW SECTION. 614.4A IDENTITY THEFT.
1 2 In actions for relief on the ground of identity theft under
1 3 section 714.16B, the cause of action shall not be deemed to
1 4 have accrued until the identity theft complained of is
1 5 discovered by the party aggrieved.
1 6 Sec. 2. Section 714.16B, Code 2005, is amended to read as
1 7 follows:
1 8 714.16B IDENTITY THEFT == CIVIL CAUSE OF ACTION.
1 9 In addition to any other remedies provided by law, a person
1 10 as defined under section 714.16, subsection 1, suffering a
1 11 pecuniary loss as a result of an identity theft by another
1 12 person under section 715A.8, or a financial institution as
1 13 defined in section 422.61, subsection 1, on behalf of an
1 14 account holder suffering a pecuniary loss as a result of an
1 15 identity theft by another person under section 715A.8, may
1 16 bring an action against such other person to recover all of
1 17 the following:
1 18 1. ~~One~~ Five thousand dollars or three times the actual
1 19 damages, whichever is greater.
1 20 2. Reasonable costs incurred due to the violation of
1 21 section 715A.8, including all of the following:
1 22 a. Costs for repairing the victim's credit history or
1 23 credit rating.
1 24 b. Costs incurred for bringing a civil or administrative
1 25 proceeding to satisfy a debt, lien, judgment, or other
1 26 obligation of the victim.
1 27 c. Punitive damages, attorney fees, and court costs.
1 28 Sec. 3. Section 715A.8, subsection 1, Code 2005, is
1 29 amended to read as follows:
1 30 1. a. For purposes of this section, "identification
1 31 information" means includes, but is not limited to, the name,
1 32 address, date of birth, telephone number, driver's license
1 33 number, nonoperator's identification card number, social
1 34 security number, student identification number, military
1 35 identification number, alien identification or citizenship
2 1 status number, employer identification number, signature,
2 2 electronic mail signature, electronic identifier or screen
2 3 name, biometric identifier, genetic identification
2 4 information, access device, logo, symbol, trademark, place of
2 5 employment, employee identification number, parent's legal
2 6 surname prior to marriage, demand deposit account number,
2 7 savings or checking account number, or credit card number of a
2 8 person.
2 9 b. For purposes of this section, "financial institution"
2 10 means the same as defined in section 422.61.
2 11 Sec. 4. Section 715A.8, Code 2005, is amended by adding
2 12 the following new subsections:
2 13 NEW SUBSECTION. 5. Violations of this section shall be

2 14 prosecuted in any of the following venues:
2 15 a. In the county in which the violation occurred.
2 16 b. If the violation was committed in more than one county,
2 17 or if the elements of the offense were committed in more than
2 18 one county, then in any county where any violation occurred or
2 19 where an element of the offense occurred.
2 20 c. In the county where the victim resides.
2 21 d. In the county where the property that was fraudulently
2 22 used or attempted to be used was located at the time of the
2 23 violation.

2 24 NEW SUBSECTION. 6. Any real or personal property obtained
2 25 by a person as a result of a violation of this section,
2 26 including but not limited to any money, interest, security,
2 27 claim, contractual right, or financial instrument that is in
2 28 the possession of the person, shall be subject to seizure and
2 29 forfeiture pursuant to chapter 809A. A victim injured by a
2 30 violation of this section, or a financial institution that has
2 31 indemnified a victim injured by a violation of this section,
2 32 may file a claim as an interest holder pursuant to section
2 33 809A.11 for payment of damages suffered by the victim
2 34 including costs of recovery and reasonable attorney fees.

2 35 NEW SUBSECTION. 7. A financial institution may file a
3 1 complaint regarding a violation of this section on behalf of a
3 2 victim and shall have the same rights and privileges as the
3 3 victim if the financial institution has indemnified the victim
3 4 for such violations.

3 5 NEW SUBSECTION. 8. Upon the request of a victim, a peace
3 6 officer in any jurisdiction described in subsection 5 shall
3 7 take a report regarding an alleged violation of this section
3 8 and shall provide a copy of the report to the victim. The
3 9 report may also be provided to any other law enforcement
3 10 agency in any of the jurisdictions described in subsection 5.

3 11 EXPLANATION

3 12 This bill relates to the offense of identity theft,
3 13 including providing for civil causes of action, and the rights
3 14 of financial institutions regarding violations.

3 15 The bill expands the definition of "identification
3 16 information" to include a student or military identification
3 17 number, alien or citizenship number, employer identification
3 18 number, signature or electronic signature, electronic
3 19 identifier or screen name, biometric identifier, genetic
3 20 identification information, access device, logo, symbol, or
3 21 trademark. The bill provides a definition of "financial
3 22 institution".

3 23 The bill describes the appropriate venues in which
3 24 violations may be prosecuted. The bill provides that any
3 25 property obtained by a person as a result of identity theft
3 26 that is in the possession of the person is subject to seizure
3 27 and forfeiture pursuant to Code chapter 809A. Either a
3 28 victim, or a financial institution that has indemnified a
3 29 victim, may act as an interest holder and file a claim for
3 30 forfeited property for the payment of damages suffered by the
3 31 victim due to the violation.

3 32 The bill provides that a financial institution may file a
3 33 complaint of identity theft on behalf of a victim. A peace
3 34 officer shall take a complaint in a report of identity theft
3 35 at the request of a victim and provide a copy of the report to
4 1 the victim. The peace officer may also provide copies of the
4 2 report to a law enforcement agency in another jurisdiction
4 3 with proper venue.

4 4 The bill provides that a financial institution may file a
4 5 civil action on behalf of an account holder who has suffered a
4 6 loss of money due to identity theft. The civil action filed
4 7 by or on behalf of a victim may seek certain damages described
4 8 by the bill. The bill increases the amount of statutory
4 9 damages available from \$1,000 or three times the actual
4 10 damages to \$5,000 or three times the actual damages, and
4 11 provides for the recovery of costs for the repair of a
4 12 victim's credit history, costs incurred for bringing an action
4 13 to satisfy an obligation of the victim, and for punitive
4 14 damages. Current law already provides for recovery of
4 15 attorney fees and court costs.

4 16 The bill provides that for the purpose of determining the
4 17 statute of limitations period for civil actions to recover
4 18 losses incurred due to identity theft, the limitations period
4 19 shall not begin to run until the victim discovers the identity
4 20 theft.